



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/150170

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 19, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to recover an overissuance of child care benefits from Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Tamika Terrell/Keisha Love

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's is a two parent household and the group size is 4.

3. The agency sent Petitioner a Child Care Overpayment Notification, dated May 14, 2013, that informed Petitioner that he had been overissued child care benefits in the total amount of \$7892.40. Claim # [REDACTED]. The period of the overpayment is July 1, 2012 through March 31, 2013. The same notice was also sent to the mother of the children.
4. The child care benefit overissuance involved here is that household income was in excess of program limits.
5. Both parents work. They had the following amount of gross income from wages in the following months in 2012: July - \$4379, August - \$3870, September - \$4225, October - \$4504, November - \$4006 and December - \$4184. These amounts are rounded and taken from actual wages provided by employers. See Exhibit # 2 – E3, page 3 and E4 page 2. These match the figures provided on the agency overpayment calculation worksheet within \$2.00. Exhibit # B2.
6. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.

### DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *Wis. Admin. Code*, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. *Wis. Admin. Code*, § DCF 101.23(1) (g). *Adm. Code*. Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual)*, §2.3.1.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

There is an income test for child care eligibility, both at application and for ongoing eligibility. While initial eligibility requires income below 185% of the Federal Poverty level, to maintain eligibility income must stay below 200% of the Federal Poverty Level. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §1.6.3. As Petitioner’s case was ongoing it is the 200% of the Federal Poverty Level

(FPL) test that is to be applied. 200% of the FPL for a group of 4 during the period involved here was \$3842.00. *See Operations Memo 12-06, issued and effective February 1, 2012.*

I also note that there are reporting requirements:

**1.15.1 Reporting Requirements**

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

**1.15.2 Examples of Required Information to be Reported**

Examples of some of the information that parents are required to report include:

A change in the scheduled approved activity hours

A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.

...

*Manual, §§1.15.1 and 1.15.2.*

Petitioner does not dispute the above but maintains that this is not fair as these rules were not clearly explained. I do note that the gross income limit is found on notices contained as part of Exhibit # H. Finally, I note that the Division of Hearings and Appeals that the Division does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).* The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions and does not have authority to ignore or change them.

**CONCLUSIONS OF LAW**

That the evidence demonstrates that Petitioner's household income was in excess of 200% of the FPL as noted herein for the time period of July – December 2012, thus the agency correctly determined the overpayment.

**THEREFORE, it is**

**ORDERED**

That this case is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

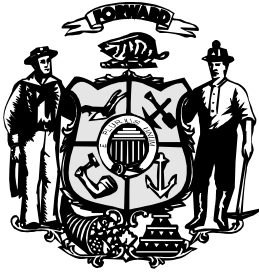
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of November, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 11, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud